

ASSEMBLY BILL

No. 622

Introduced by Assembly Member Olberg

February 19, 1999

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 622, as introduced, Olberg. Sales and use taxes: exclusions: beverage containers.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale of tangible personal property sold at retail and on the amount of the sales price with respect to the storage, use, or other consumption of tangible personal property in this state.

This bill would provide that, for purposes of this law, the terms “sales price” and “gross receipts” exclude the amount charged for the redemption payment, as specified, with respect to recyclable beverage containers.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6011 of the Revenue and
2 Taxation Code is amended to read:

3 6011. (a) "Sales price" means the total amount for
4 which tangible personal property is sold or leased or
5 rented, as the case may be, valued in money, whether
6 paid in money or otherwise, without any deduction on
7 account of any of the following:

8 (1) The cost of the property sold.

9 (2) The cost of materials used, labor or service cost,
10 interest charged, losses, or any other expenses.

11 (3) The cost of transportation of the property, except
12 as excluded by other provisions of this section.

13 (b) The total amount for which the property is sold or
14 leased or rented includes all of the following:

15 (1) Any services that are a part of the sale.

16 (2) Any amount for which credit is given to the
17 purchaser by the seller.

18 (3) The amount of any tax imposed by the United
19 States upon producers and importers of gasoline and the
20 amount of any tax imposed pursuant to Part 2
21 (commencing with Section 7301) of this division.

22 (c) "Sales price" does not include any of the following:

23 (1) Cash discounts allowed and taken on sales.

24 (2) The amount charged for property returned by
25 customers when that entire amount is refunded either in
26 cash or credit, but this exclusion shall not apply in any
27 instance when the customer, in order to obtain the
28 refund, is required to purchase other property at a price
29 greater than the amount charged for the property that is

1 returned. For the purpose of this section, refund or credit
2 of the entire amount shall be deemed to be given when
3 the purchase price less rehandling and restocking costs
4 are refunded or credited to the customer. The amount
5 withheld for rehandling and restocking costs may be a
6 percentage of the sales price determined by the average
7 cost of rehandling and restocking returned merchandise
8 during the previous accounting cycle.

9 (3) The amount charged for labor or services rendered
10 in installing or applying the property sold.

11 (4) (A) The amount of any tax (not including,
12 however, any manufacturers' or importers' excise tax,
13 except as provided in subparagraph (B)) imposed by the
14 United States upon or with respect to retail sales whether
15 imposed upon the retailer or the consumer.

16 (B) The amount of manufacturers' or importers'
17 excise tax imposed pursuant to Section 4081 or 4091 of the
18 Internal Revenue Code for which the purchaser certifies
19 that he or she is entitled to either a direct refund or credit
20 against his or her income tax for the federal excise tax
21 paid.

22 (5) The amount of any tax imposed by any city, county,
23 city and county, or rapid transit district within the State
24 of California upon or with respect to retail sales of
25 tangible personal property, measured by a stated
26 percentage of sales price or gross receipts, whether
27 imposed upon the retailer or the consumer.

28 (6) The amount of any tax imposed by any city, county,
29 city and county, or rapid transit district within the State
30 of California with respect to the storage, use or other
31 consumption in that city, county, city and county, or rapid
32 transit district of tangible personal property measured by
33 a stated percentage of sales price or purchase price,
34 whether the tax is imposed upon the retailer or the
35 consumer.

36 (7) Separately stated charges for transportation from
37 the retailer's place of business or other point from which
38 shipment is made directly to the purchaser, but the
39 exclusion shall not exceed a reasonable charge for
40 transportation by facilities of the retailer or the cost to the

1 retailer of transportation by other than facilities of the
2 retailer. However, if the transportation is by facilities of
3 the retailer, or the property is sold for a delivered price,
4 this exclusion shall be applicable solely with respect to
5 transportation which occurs after the purchase of the
6 property is made.

7 (8) Charges for transporting landfill from an
8 excavation site to a site specified by the purchaser, either
9 if the charge is separately stated and does not exceed a
10 reasonable charge or if the entire consideration consists
11 of payment for transportation.

12 (9) The amount of any motor vehicle, mobilehome, or
13 commercial coach fee or tax imposed by and paid the
14 State of California that has been added to or is measured
15 by a stated percentage of the sales or purchase price of a
16 motor vehicle, mobilehome, or commercial coach.

17 (10) (A) The amount charged for intangible personal
18 property transferred with tangible personal property in
19 any technology transfer agreement, if the technology
20 transfer agreement separately states a reasonable price
21 for the tangible personal property.

22 (B) If the technology transfer agreement does not
23 separately state a price for the tangible personal
24 property, and the tangible personal property or like
25 tangible personal property has been previously sold or
26 leased, or offered for sale or lease, to third parties at a
27 separate price, the price at which the tangible personal
28 property was sold, leased, or offered to third parties shall
29 be used to establish the retail fair market value of the
30 tangible personal property subject to tax. The remaining
31 amount charged under the technology transfer
32 agreement is for the intangible personal property
33 transferred.

34 (C) If the technology transfer agreement does not
35 separately state a price for the tangible personal
36 property, and the tangible personal property or like
37 tangible personal property has not been previously sold
38 or leased, or offered for sale or lease, to third parties at a
39 separate price, the retail fair market value shall be equal
40 to 200 percent of the cost of materials and labor used to



1 produce the tangible personal property subject to tax.
2 The remaining amount charged under the technology
3 transfer agreement is for the intangible personal
4 property transferred.

5 (D) For purposes of this paragraph, “technology
6 transfer agreement” means any agreement under which
7 a person who holds a patent or copyright interest assigns
8 or licenses to another person the right to make and sell a
9 product or to use a process that is subject to the patent or
10 copyright interest.

11 (11) The amount of any tax imposed upon diesel fuel
12 pursuant to Part 31 (commencing with Section 60001).

13 (12) *The amount of any redemption payment imposed*
14 *on beverage containers pursuant to Section 14560 of the*
15 *Public Resources Code, and identified for the consumer*
16 *pursuant to Section 14560.5 of the Public Resources Code.*

17 SEC. 2. Section 6012 of the Revenue and Taxation
18 Code is amended to read:

19 6012. (a) “Gross receipts” mean the total amount of
20 the sale or lease or rental price, as the case may be, of the
21 retail sales of retailers, valued in money, whether
22 received in money or otherwise, without any deduction
23 on account of any of the following:

24 (1) The cost of the property sold. However, in
25 accordance with any rules and regulations as the board
26 may prescribe, a deduction may be taken if the retailer
27 has purchased property for some ~~other~~ purpose *other*
28 than resale, has reimbursed his or her vendor for tax
29 which the vendor is required to pay to the state or has
30 paid the use tax with respect to the property, and has
31 resold the property prior to making any use of the
32 property other than retention, demonstration, or display
33 while holding it for sale in the regular course of business.
34 If that deduction is taken by the retailer, no refund or
35 credit will be allowed to his or her vendor with respect to
36 the sale of the property.

37 (2) The cost of the materials used, labor or service cost,
38 interest paid, losses, or any other expense.

39 (3) The cost of transportation of the property, except
40 as excluded by other provisions of this section.

1 (4) The amount of any tax imposed by the United
2 States upon producers and importers of gasoline and the
3 amount of any tax imposed pursuant to Part 2
4 (commencing with Section 7301) of this division.

5 (b) The total amount of the sale or lease or rental price
6 includes all of the following:

7 (1) Any services that are a part of the sale.

8 (2) All receipts, cash, credits and property of any kind.

9 (3) Any amount for which credit is allowed by the
10 seller to the purchaser.

11 (c) "Gross receipts" do not include any of the
12 following:

13 (1) Cash discounts allowed and taken on sales.

14 (2) Sale price of property returned by customers when
15 that entire amount is refunded either in cash or credit,
16 but this exclusion shall not apply in any instance when the
17 customer, in order to obtain the refund, is required to
18 purchase other property at a price greater than the
19 amount charged for the property that is returned. For the
20 purpose of this section, refund or credit of the entire
21 amount shall be deemed to be given when the purchase
22 price less rehandling and restocking costs are refunded or
23 credited to the customer. The amount withheld for
24 rehandling and restocking costs may be a percentage of
25 the sales price determined by the average cost of
26 rehandling and restocking returned merchandise during
27 the previous accounting cycle.

28 (3) The price received for labor or services used in
29 installing or applying the property sold.

30 (4) (A) The amount of any tax (not including,
31 however, any manufacturers' or importers' excise tax,
32 except as provided in subparagraph (B)) imposed by the
33 United States upon or with respect to retail sales whether
34 imposed upon the retailer or the consumer.

35 (B) The amount of manufacturers' or importers'
36 excise tax imposed pursuant to Section 4081 or 4091 of the
37 Internal Revenue Code for which the purchaser certifies
38 that he or she is entitled to either a direct refund or credit
39 against his or her income tax for the federal excise tax
40 paid.

1 (5) The amount of any tax imposed by any city, county,
2 city and county, or rapid transit district within the State
3 of California upon or with respect to retail sales of
4 tangible personal property measured by a stated
5 percentage of sales price or gross receipts whether
6 imposed upon the retailer or the consumer.

7 (6) The amount of any tax imposed by any city, county,
8 city and county, or rapid transit district within the State
9 of California with respect to the storage, use or other
10 consumption in that city, county, city and county, or rapid
11 transit district of tangible personal property measured by
12 a stated percentage of sales price or purchase price,
13 whether the tax is imposed upon the retailer or the
14 consumer.

15 (7) Separately stated charges for transportation from
16 the retailer's place of business or other point from which
17 shipment is made directly to the purchaser, but the
18 exclusion shall not exceed a reasonable charge for
19 transportation by facilities of the retailer or the cost to the
20 retailer of transportation by other than facilities of the
21 retailer. However, if the transportation is by facilities of
22 the retailer, or the property is sold for a delivered price,
23 this exclusion shall be applicable solely with respect to
24 transportation which occurs after the sale of the property
25 is made to the purchaser.

26 (8) Charges for transporting landfill from an
27 excavation site to a site specified by the purchaser, either
28 if the charge is separately stated and does not exceed a
29 reasonable charge or if the entire consideration consists
30 of payment for transportation.

31 (9) The amount of any motor vehicle, mobilehome, or
32 commercial coach fee or tax imposed by and paid to the
33 State of California that has been added to or is measured
34 by a stated percentage of the sales or purchase price of a
35 motor vehicle, mobilehome, or commercial coach.

36 (10) (A) The amount charged for intangible personal
37 property transferred with tangible personal property in
38 any technology transfer agreement, if the technology
39 transfer agreement separately states a reasonable price
40 for the tangible personal property.

1 (B) If the technology transfer agreement does not
2 separately state a price for the tangible personal
3 property, and the tangible personal property or like
4 tangible personal property has been previously sold or
5 leased, or offered for sale or lease, to third parties at a
6 separate price, the price at which the tangible personal
7 property was sold, leased, or offered to third parties shall
8 be used to establish the retail fair market value of the
9 tangible personal property subject to tax. The remaining
10 amount charged under the technology transfer
11 agreement is for the intangible personal property
12 transferred.

13 (C) If the technology transfer agreement does not
14 separately state a price for the tangible personal
15 property, and the tangible personal property or like
16 tangible personal property has not been previously sold
17 or leased, or offered for sale or lease, to third parties at a
18 separate price, the retail fair market value shall be equal
19 to 200 percent of the cost of materials and labor used to
20 produce the tangible personal property subject to tax.
21 The remaining amount charged under the technology
22 transfer agreement is for the intangible personal
23 property transferred.

24 (D) For purposes of this paragraph, “technology
25 transfer agreement” means any agreement under which
26 a person who holds a patent or copyright interest assigns
27 or licenses to another person the right to make and sell a
28 product or to use a process that is subject to the patent or
29 copyright interest.

30 (11) The amount of any tax imposed upon diesel fuel
31 pursuant to Part 31 (commencing with Section 60001).

32 ~~For~~

33 *(12) The amount of any redemption payment imposed*
34 *on beverage containers pursuant to Section 14560 of the*
35 *Public Resources Code, and identified for the consumer*
36 *pursuant to Section 14560.5 of the Public Resources Code.*

37 (d) For purposes of the sales tax, if the retailers
38 establish to the satisfaction of the board that the sales tax
39 has been added to the total amount of the sale price and
40 has not been absorbed by them, the total amount of the

1 sale price shall be deemed to be the amount received
2 exclusive of the tax imposed. Section 1656.1 of the Civil
3 Code shall apply in determining whether or not the
4 retailers have absorbed the sales tax.

5 SEC. 3. Notwithstanding Section 2230 of the Revenue
6 and Taxation Code, no appropriation is made by this act
7 and the state shall not reimburse any local agency for any
8 sales and use tax revenues lost by it under this act.

9 SEC. 4. This act provides for a tax levy within the
10 meaning of Article IV of the Constitution and shall go into
11 immediate effect. However, the provisions of this act shall
12 become operative on the first day of the first calendar
13 quarter commencing more than 90 days after the
14 effective date of this act.

